considered fall naturally into four general classes—viz., Those powers which belong exclusively to the several states; those which belong exclusively to the General Government; those which may be exercised concurrently by both the states and the United States, and those which may be temporarily exercised by the states, but only until Congress, by some direct action, assumes the exercise of the power in behalf of the Federal Government.

One feature which is lacking, and that would have added very materially to the value and usefulness of the book, is a complete index, and, possibly, a list of authorities cited.

W. C. M.

NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

CENTRAL LAW JOURNAL.—July 7.

In How Far May Acts of the Legislature be made Contingent upon Being Accepted by Popular Vote without Violating the Principle that Legislative Power Cannot be Delegated? F. E. Williams. The theory of the separation of the sovereign powers of the government is one that has had centuries of discussion; has seemed to be settled; has come again under discussion from ultra modern points of view in these days of the new century. To review a paper of this kind would be to go over the old ground again and add a discussion of the newer theories, which do not supplant, but rather supplement, the old. The author of this paper does not, however, call for quite so exhaustive a discussion; he takes for granted the theory that legislative power cannot be delegated, and from that goes on to attack his problem as stated in his title. He first examines the form of the act, which he states to be of great importance; the act must be *in presenti* to take effect *in futuro*—that is, it must not leave to the people the responsibility of making the law, but only of declaring whether they will accept it or not. "The importance of a complete form of an enactment of this kind is illustrated when the courts say that 'the vote should spring from the law and not the law from the vote,' and that the legislature must exercise its own judgment definitely and finally on the expediency of the act, and in effect declare it to be inexpedient if the vote is unfavorable." Having satisfied the form, the act may be submitted to the people without violating the principle that legislative power cannot be delegated. As to manner of operation, an examination is made into the operation of general statutes, local option statutes, and special local option statutes, finding that "the weight of authority holds that in the absence of express constitutional authorization a legislative act cannot be made contingent upon being accepted by a popular vote of the state at large." As to general local option laws, we find that they are generally upheld, the reasons for this being given with a good deal of particularity. Special local option laws have also been upheld. As to the subject matter of the act, we find that a great variety of subjects have been acted upon, but they are restricted to matters of local interest and concern, and cannot include matters of general interest and concern to all the people of the state or country. Lastly we find that there are constitutional provisions which may affect a particular case, and here again the wording of the act may be of great importance. Mr. Williams summarizes his conclusions as follows:

"*First.* Independent of any express constitutional authorization, the enactment, operation, or taking effect of a legislative act cannot be made contingent upon popular acceptance by the state at large, for the reason that such acceptance is inconsistent with our system of representative government and is therefore construed as a violation of the principle that legislative power cannot be delegated.

"*Second.* In the absence of an express constitutional limitation, local option laws both general and special, if confined to local affairs, may be passed, although their operation is contingent upon a favorable vote of the districts to be affected, and such laws do not violate the principle that legislative power cannot be delegated, for the reason that they are justified by virtue of the power and discretion of the legislature in its control of public corporations, and because of their analogy to the system of local self-government which existed in America before our constitutions were adopted and in the mother country from time immemorial."

GREEN BAG.—July.

Charles Joseph Bonaparte as a Lawyer. William Reynolds. Mr. Bonaparte's very interesting personality has taken on a still more interesting phase since his coming into a Cabinet position and the stirring manner in which he immediately began upon his duties there. The *Green Bag* offers to its readers another opportunity, among the many now given by newspapers and periodicals, to become a little better acquainted with Mr. Bonaparte. The paper is written from the viewpoint of one who has had a very intimate personal acquaintance with his subject, and who wishes to give the intimate personal view rather than the general broad view of one who writes only from knowledge of the public life of the man written about. We hear about Mr. Bonaparte's first case and how he went to it in his own carriage while others "climbed the court-house hill on foot," but we are also told that he has never practised law to make money; that is, he has regarded the faithful practice of the profession itself as "a far more important consideration than the amount of the pecuniary reward." His first political case was in 1875, and few people will need to be told that it was vigorously conducted. From that time he has constantly been "in politics" as a reformer. One would imagine without being told—and yet it is well to be told—that Mr. Bonaparte "does not pursue the methods of the mere 'case hunter' who crams himself for the occasion by the use of Digests and the Encyclopædia of Law and Equity, but adopts one somewhat similar to that of Chief-Justice Marshall, who used to say that after a difficult or important case had been argued before him, his habit was to take a long walk by himself and think it over, until he had arrived at a decision." The opinion given of Mr. Bonaparte by Mr. Seavern Teakle Wallis, and quoted by Mr. Williams, would seem to be one of exceptional insight. Mr. Wallis said 'he presented a more remarkable combination of perfect self-confidence and naïve diffidence than he had ever met with in the same person," and Mr. Williams confirms this opinion, saying: "The result of thirty-years' close observation of Mr. Bonaparte has convinced me that Mr. Wallis's diagnosis was correct. The self-confidence is always exhibited when he is advocating a cause or a principle that he believes to be just and of vital consequence, and when he is defending the rights of others which he considers unjustly assailed. In doing this he is absolutely fearless and never has been in anywise a respecter of persons. The naïve diffidence is shown in his absolute lack of self-assertion in all matters relating to his personal advancement or profit."

The Reign of Law. Hon. Joseph W. Folk. Mr. Folk's paper is so

full of sentences that need quoting that it is a pity to waste space by inserting ordinary phrases. A few of these quotations are given:

"Business is a good thing, honors are better still, but patriotism excels them all, and without patriotism one is unworthy to be a member of the legal profession. He is a minister of the law that emanates from city, state, and nation, and can no more practise law in the true spirit without patriotism, than can a divine teach the doctrines of a Christ for whom he has no devotion." "One cannot be a good lawyer without being honest. Law and honesty go together, jests to the contrary notwithstanding." "The reign of law means the rule of the people, for a majority of the people make the laws. They register their will crystallized in the form of statutes. We need a revival of the rule of the people." "It is not for an executive official to say whether a law is good or bad, but to enforce it as it is. He should not ask, is it popular? or, is it good politics? but, is it right? In the end, if he remains steadfast, the right will win. The trouble has been that a privileged class have violated the law with impunity and escaped its consequences. It is not hard to pursue with all the terrors of the law the wretch who picks a pocket or steals a loaf of bread, but it is quite another matter when the law is sought to be put against those who have millions behind them, with political influence enough to affect an entire community." "If good citizens would join hands in patriotic endeavor, the lawless could not control anything, for they constitute but a small proportion of the entire population."

These are good words for us to hear; we have too often heard those of the reformer who calls himself "practical,—the Roosevelts and the Jeromes,—who claim that it is not practical to do the things that Folk has done. Mr. Folk in words points out the fault in their reasoning; Mr. Folk in deeds has proven the truth and the virtue of his own.

Limitation of the Hours of Labor and the Federal Supreme Court. Professor Ernst Freund. The argument against the validity of the acts limiting the hours of labor is made upon the ground that they infringe upon the constitutional right of liberty to contract; the power to limit these hours is based upon the right to interfere when the health of the people is being injured. The courts of the various states have decided the question, some in one way, some in another, and the arguments from the bench have shown every shade of opinion, no preponderance showing clearly in the decisions upon either side. The decision in the New York case of *People* v. *Lochner* (73 App. Div. 120, 177 N. Y. 175) is the one which forms the basis for Mr. Freund's paper. "By the narrow margin of one vote, to which we have become accustomed in important constitutional cases, the Federal Supreme Court has reversed the decisions of the lower New York courts, and declared the limitation of hours of labor, sought to be imposed by the act in question, to be contrary to the Fourteenth Amendment." In regard to the questions as to the authority and the principles upon which this decision were based Mr. Freund comes to the conclusion that the decisions did not bind them, and that the principles were against the decision, saying, "A decision which reads into the Fourteenth Amendment a vague and controverted concept of the liberty of contract is a novel, and hardly a fortunate, step in the development of our constitutional law." The ensuing discussion of the matter is in excellent temper and shows a wide knowledge of the subject. The states have been earnest in passing legislation regulating the hours of labor, the people of the states apparently believing that such regulation, in the face of the great power of the corporations and the helplessness of the individual worker, is necessary to the well-being of the

persons employed in great masses. The Supreme Court has now apparently decided that this is an impairment of the liberty of contract. Mr. Freund says of this situation: "Even of those who believe such legislation to be unwise or premature there will be many who will refuse to believe that it is opposed to immutable principles of justice or to any fundamental principle of law, and who will regard it as unfortunate that the highest tribunal should have sought to commit American jurisprudence to that view. Whatever may be true of ultimate developments—and it is safe to say that a change in public opinion sufficiently strong and wide-spread would eventually compel judicial acquiescence, even without a change of the Fourteenth Amendment—it cannot be denied that agitation for labor or social legislation of an advanced type has suffered a serious check through the decision in *Lochner* v. *New York*."

The Civil and the Common Law. Hon. Emlin McClain. The two systems are treated as rivals, and we have a very pleasant discussion of the claims of these rivals, going over, necessarily, the usual ground as to the influence of the civil law upon the common law as held by the English-speaking countries. Mr. McClain says: "And so I say it is that, as the result of what I have called an historical accident, a rival system of the civil law has been developed among the Anglo-Saxon peoples and carried wherever Anglo-Saxon power has extended. And I venture to say, further, that the principles of the common law are better suited to institutions which recognize the right of self-government and the direct responsibility of the ruler to his subjects, and the legal equality of all men to participate in the benefits of government and social order, than are the fundamental principles on which the civil law is based." The conflict of the civil and the common law upon this continent and in these states is treated most ably, showing the allegiance of the peoples of the states to the common law and their belief that it is best adapted to the needs of a free government. Mr. McClain holds that "the most fundamentally important characteristic of the common law is that it recognizes, not merely theoretically, but practically, the doctrine that before the law all men are equal." "Now it is interesting to notice that this fundamental principle is not only not emphasized in the civil law, but that the Roman system of government did not assume it, nor embody it in existing institutions." Arguing along these lines, we are given not only a very able and interesting paper, but one which is original in thought, and which offers us a very different treatment from that usually given to the old discussion upon the common and civil law and the old arguments as to their merits and demerits.

THE YALE REVIEW (Quarterly).—May, 1905.

Disfranchisement of West Virginia. I. Charles H. Ambler. The first attempt to restrict the franchise in West Virginia was the bill known as "The voters' test-oath," whose author is quoted as saying: "I do not want the rebels to have any share in the government. If they do, I shall be defeated by five hundred votes." It is to be noted that the spirit of this remark is not notably patriotic or self-denying, and it is also to be noted that the same spirit seems to be shown throughout the entire period which is dealt with in this paper—the reconstruction period. The bitter partisanship, the disregard of principle in order to secure any advantage, the unscrupulousness of the methods employed to attain ends, all are set forth here apparently without malice, it would almost seem,—but it is necessary to remember that this is only a first instalment,—without consciousness that the methods are vicious or unusual. The paper is certainly an illuminating one as regards political conditions in such states as West Virginia in the reconstruction period.